

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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DYSON, INC.,

Plaintiff,

v.

BISSELL HOMECARE, INC.,

Defendant.

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CIVIL ACTION NO.:

10-CV-8126

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff DYSON, INC. (“Dyson”), by its attorneys Proskauer Rose LLP, complains against Defendant BISSELL HOMECARE, INC. (“Bissell”), and alleges the following based upon knowledge as to its own acts and actions and upon information and belief as to all other matters:

**INTRODUCTION**

1. Plaintiff Dyson is the leading innovator in the vacuum cleaner industry. Although Dyson did not enter the US market until 2002, it swiftly became a market leader due to ground-breaking advancements that revolutionized vacuum cleaner technology.

2. Defendant Bissell also distributes and sells vacuum cleaners in the US. Bissell’s vacuums are typically sold at much lower prices than Dyson vacuums and are of vastly lower quality than Dyson vacuums in terms of key performance metrics important to many consumers.

One such key metric is air filtration performance, which directly impacts the quality of the air emitted by the vacuum cleaner while it is in operation.

3. This lawsuit arises out of a Bissell advertising campaign that encompasses at least 11 different Bissell vacuum cleaner models, including its 5 top selling upright vacuum cleaners, and that is false to its core. Bissell's advertising campaign preys on the strong and growing consumer interest in household products that can help improve indoor air quality and remove harmful allergens from the air consumers breathe in their homes. Specifically, and as discussed in detail in the body of this Complaint, Bissell makes explicit, quantified representations to consumers about the air filtration performance of Bissell vacuums, as well as about the health benefits that result from using Bissell vacuums, that are utterly false, and that Bissell knows are false. Bissell's false advertising campaign is especially pernicious because some of Bissell's key representations to consumers, including statements about the percentage of dust and allergen particles captured by Bissell vacuums, cannot be independently verified by consumers.

4. According to the Asthma and Allergy Foundation of America (AAFA), "Americans spend an estimated \$10 billion a year on non-medicinal, consumer products marketed for people with asthma and allergies such as vacuum cleaners, air cleaners, bedding, toys, flooring and more." <http://www.asthmaandallergyfriendly.com/>. It is well-known that household dust contains allergens such as pet dander, pollen, mold and dust mites which, when airborne, can aggravate asthma and cause allergic reactions and other respiratory difficulties. Vacuum cleaners can improve indoor air quality *if* they can effectively capture and trap these common allergens.

5. "HEPA" -- short for High Efficiency Particulate Air -- is a term used in the US to describe certain types of air filters and air filtration systems. It is also a term that Bissell uses

repeatedly in its vacuum cleaner advertisements. In the US, HEPA refers to the ability of a filtration system to trap at least 99.97% of dust and other particles that are 0.3 microns in size. (Particles that are 0.3 microns in size are almost unimaginably small, as the diameter of a typical human hair is about 80 microns). Vacuum cleaners that provide HEPA filtration performance minimize the number of allergen-containing household dust particles picked up by the vacuum cleaner from circulating back into the air of the room through the vacuum's exhaust while the vacuum is in operation. Thus, the HEPA-level performance of a vacuum cleaner's filtration system can benefit consumers who suffer from asthma and allergies or other respiratory difficulties by significantly limiting the amount of potentially harmful allergen particles that the vacuum emits into the air while it is running.

6. Dyson upright and canister vacuums contain HEPA filters. Dyson communicates this fact to consumers in its product advertising.

7. Upon information and belief, in an attempt to delude consumers into the false belief that Bissell vacuums are the equal of, or are superior to, Dyson vacuums in air filtration performance at a lower price, Bissell's advertising explicitly claims that each of its leading-selling upright vacuum cleaner models, and numerous other Bissell vacuums, provide HEPA air filtration performance. Bissell also explicitly represents to consumers that each of its leading-selling upright vacuum cleaner models, and numerous other of its vacuums, capture at least 99.9% of some of the most common allergens contained in household dust.

8. Recognizing the importance of home air quality to consumers, Bissell has made the supposed HEPA air filtration performance and allergen capture capabilities of its vacuum cleaners a centerpiece of its advertising for those products.

9. Bissell leaves nothing to the imagination about how consumers supposedly benefit as a result of the supposed HEPA-level filtration and allergen capture performance of its vacuum cleaners. Bissell tells consumers that “[v]acuuuming is part of the dust control portion of the cleaning process to help control these allergens. It is important you use a quality vacuum. Without a quality vacuum, you will be circulating dirty air throughout the room. What you need is a vacuum with an excellent filtration system. BISSELL has the HEPA Filter technology supporting many of the vacuum products including the Healthy Home Vacuum™. The vacuum will aid in removing 99.97% of dust mites, pollens, and ragweed particles from your home.” See <http://www.bissell.com/cleaning-tips/allergen-control-tips/>.

10. As described in detail herein, Bissell’s air filtration-related advertising statements for at least 11 of its vacuum cleaner models are literally false. In fact, independent testing commissioned by Dyson demonstrates that the filtration performance of nearly all of Bissell’s leading-selling upright vacuums, and of many of its other vacuums, is actually extremely poor, and not remotely close to HEPA-level. Independent testing also demonstrates that the allergen capture performance of nearly all of Bissell’s leading selling upright vacuums, and many of its other vacuums, is also extremely poor, and not remotely close to the 99.9% figure Bissell repeatedly claims in its advertising. In short, when Bissell’s inferior quality vacuums are used in the homes of consumers, millions, and sometimes tens of millions, of allergen-containing dust particles that are picked up by the vacuum, pass through or around the air filtration system and are circulated back into the air while the vacuum is operating, where they are breathed by residents of and visitors to the home.

11. Bissell explicitly states on its website that “BISSELL products are evaluated according to a comprehensive test process employing over 150 specific tests,” and that Bissell

“performs and complies with all industry standard tests.” <http://www.bissell.com/cleaning-tips/vacuum-development/>. Plainly, this is not true. In fact, the independent HEPA air filtration performance tests commissioned by Dyson are industry standard tests. They revealed that none of Bissell’s leading-selling upright vacuums, or other Bissell vacuum cleaners tested, provide HEPA-level air filtration. They also demonstrated that the air filtration performance of nearly all tested Bissell vacuums is terrible, and vastly inferior to what Bissell explicitly represents to consumers in its advertising.

12. Upon information and belief, most of the Bissell vacuum cleaners tested were deliberately designed to *reduce* the vacuum cleaner’s air filtration performance, compared to the air filtration performance that Bissell could have achieved, in order to maintain the vacuum’s suction performance.

13. In sum, Bissell is engaged in a massive campaign to deceive US consumers concerning the supposed health benefits of Bissell’s line of vacuum cleaners, and consumers have relied and will continue to rely on Bissell’s false claims. Bissell’s sham advertising statements that its vacuum cleaners provide HEPA-level air filtration performance which greatly improves the indoor air quality of consumers’ homes are belied by the actual fact that nearly all of Bissell’s vacuums spew out literally millions of dust particles into household air each time they are used. Bissell’s advertising slogan that Bissell “Mean[s] Clean” could not be further from the truth.

14. Viewers of Bissell’s advertising who would otherwise be willing to pay a premium price for the superior air filtration performance of Dyson vacuum cleaners will inescapably take away the false message that they can achieve the same or better performance with Bissell’s lower-priced models. Upon information and belief, Bissell’s false air filtration

performance/health benefits advertising campaign has already hurt Dyson's sales and profits by diverting consumers into lower-priced markets, and that campaign will continue to do so unless Bissell is enjoined from making the advertising statements challenged in this Complaint.

15. In this action, Dyson alleges that Bissell has engaged in false advertising in violation of the Lanham Act, 15 U.S.C. §1125(a), and related Illinois statutory and common law. Dyson seeks permanent injunctive relief, statutory, punitive, compensatory and enhanced damages, its costs, attorneys' fees and Bissell's profits.

### **THE PARTIES**

16. Dyson is an Illinois corporation with its principal place of business at 600 West Chicago Avenue, Suite 275, Chicago, Illinois 60654. Dyson is an affiliate of the Dyson group of companies based in the United Kingdom (Dyson and the Dyson group of companies are sometimes collectively referred to as the "Dyson Companies"). The Dyson Companies design, manufacture, market and sell technology products and related accessories, including upright, canister and handheld vacuum cleaners, and various parts and accessories for those vacuum cleaners. These products, including vacuum cleaners, are sold throughout the United States and in the state of Illinois, including this judicial district.

17. Upon information and belief, Bissell is a corporation organized under the laws of Michigan with its principal place of business at 2345 Walker Avenue, NW, Grand Rapids, Michigan 49544. Bissell markets and sells consumer appliances, including upright, canister and handheld vacuums, cleaning products, sweepers, mops and steam cleaners, in this judicial district and throughout the US. The offending advertising statements have been distributed and otherwise published in this judicial district, as well as throughout the US.

18. Bissell competes with Dyson in the US vacuum cleaner market. Although sold at different price points, Bissell's vacuum cleaners and Dyson's vacuum cleaners are each sold at numerous retail outlets, including Lowe's, Amazon, Best Buy, Target, Wal-Mart, Bed Bath & Beyond and Kohl's.

### **JURISDICTION AND VENUE**

19. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because the action arises under the Lanham Act, 15 U.S.C. §§ 1051, *et seq.*, and pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and this lawsuit is between citizens of different States. The Court has supplemental jurisdiction over Dyson's state law claims pursuant to 28 U.S.C. §1367(a).

20. This Court has personal jurisdiction over Bissell under 735 ILCS 5/2-209 because Bissell has disseminated the advertisements at issue in the state of Illinois, including in this judicial district, and otherwise transacts business in the state of Illinois, including in this district.

21. Venue is proper in this federal judicial district pursuant to 28 U.S.C. §§ 1391(b)(1) and (c) because Bissell is subject to personal jurisdiction in this judicial district, and on that basis is deemed to reside in this district. Venue is also proper in this federal judicial district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims alleged herein occurred within this district.

### **FACTS**

#### **DYSON'S VACUUM CLEANERS**

22. By far the most common type of vacuum cleaner sold in the US is the upright vacuum. An upright vacuum is a self-contained unit with a handle that extends up from the main

unit. Canister vacuums have their motor mechanisms stored in a low-to-the-floor base, and the consumer will usually maneuver a canister vacuum by using a long hose attached to a vacuum cleaner head. Handheld vacuums are light, portable vacuums that, in contrast to upright and canister vacuums, typically are used to clean specific, relatively small spots or locations in the home, rather than full rooms.

23. Vacuum cleaners use suction power to pick up dust and debris. Thus, suction power is critical to the dust pick up performance of all vacuum cleaners. Dyson vacuum cleaners were originally developed as a solution to a serious performance problem that plagued conventional vacuum cleaners -- the loss of suction power and cleaning capability as airflow through the vacuum bag gradually was blocked by the dust that accumulated in the bag. To solve the loss of suction problem associated with traditional bagged vacuums, the Dyson Companies' founder and principal inventor, James Dyson, experimented for years to develop a bagless vacuum that utilized cyclonic technology to separate dust and debris from the vacuum's incoming air flow, thereby enabling Dyson vacuums to maintain a constant, high level of suction through the life of the vacuum.

24. Dyson's separation technology initially used two cyclones, and was then further perfected through the use of additional cyclones to generate even higher suction power, resulting in vacuums with more dust and dirt pick up and even better cleaning performance. As a result of Dyson's patented cyclone technology that spins dirt out of the air (first known by the Dyson trademark Dual Cyclone™ and later by the Dyson trademark Root Cyclone™), Dyson vacuums do not lose suction with extended use.

25. In addition to the powerful cyclonic dirt separation system, Dyson's upright and canister vacuums also contain, among other things, HEPA air filters. Dyson's filtration



performance is a key measure utilized in obtaining certification from the AAFA, a fact which Dyson advertises to consumers. While any vacuum will retain some allergen-containing dust that is picked up while the vacuum is being operated, vacuums with filtration systems that perform at HEPA-level or better will minimize the amount of dust and allergens picked up by the vacuum from being released through the vacuum's exhaust back into the air of the room being vacuumed. As a result of widespread publicity that allergic, asthmatic and other respiratory reactions are often triggered by airborne allergens, a HEPA-level air filtration system has become an important attribute to many vacuum cleaner purchasers. The air filtration performance of Dyson vacuums is vastly superior to that of Bissell vacuums.

26. All Dyson upright and canister vacuums advertised on Dyson's website are certified "asthma & allergy friendly" by the AAFA, the leading patient advocacy group for those with asthma and allergic diseases. These Dyson vacuums were tested by a laboratory associated with the AAFA to measure the vacuums' ability to reduce allergenic and irritant materials. Those tests covered, among other performance aspects, the removal of allergen-containing test dust from carpets, levels of airborne allergens during vacuuming and filtration integrity. Dyson is one of only two vacuum manufacturers whose vacuums have been certified as meeting these AAFA standards. No Bissell vacuum cleaner model has been certified by the AAFA.

#### **HEPA FILTRATION PERFORMANCE IN VACUUM CLEANERS**

27. HEPA filters were first invented during World War II to protect Manhattan Project workers from radioactive dust and to keep harmful particles from escaping atomic laboratories.

28. In addition to vacuum cleaners, HEPA filters are also used in other household products such as air purifiers, and in commercial settings where it is necessary to prevent exposure to harmful airborne particles, including lead dust and asbestos.

29. The fact that a vacuum filter is constructed in such a manner that makes it capable of HEPA-level filtration performance does not mean that it will actually achieve HEPA-level performance while the vacuum is in operation. For a vacuum to provide HEPA-level filtration, the vacuum must not only utilize filter material (often referred to as “filter media”) that is HEPA-*capable*, but the filter must be incorporated into the vacuum in such a way as to allow the filter to function optimally.

30. Several factors will determine whether a vacuum that contains HEPA filter media will actually provide HEPA-level filtration during the vacuum’s operation. HEPA filter material can be purchased at various grades of fiber density. Which grade of filter material to use in a particular vacuum cleaner model is important, because different grades will perform better than others in particular models, and not all HEPA-grade filter material will filter the air containing the vacuumed dust at a HEPA-level in a particular vacuum cleaner. In particular, in a well-designed vacuum cleaner, the size of the vacuum’s filter and the speed with which air circulates through the vacuum (the air “flow rate”), would impact the selection of the grade of filter media to be used.

31. Another factor that affects whether a vacuum containing HEPA-quality filter material can provide HEPA-level filtration performance when the vacuum is operating is the construction and seal of the filter. To achieve HEPA-level filtration, the filter material must be properly pleated and installed into the filter case. Moreover, and of critical importance in the particular case of Bissell’s vacuum cleaners, there must be an effective seal between the filter

and the main body of the vacuum cleaner to prevent inflowing dust from circumventing the filter and being exhausted back into the room. Similarly, any other locations within the vacuum cleaner through which dust-laden air could leak and escape into the air must be sealed.

32. A vacuum's overall design can also impact the effectiveness of its filtration system. For example, in some poorly-designed vacuums, HEPA-level filtration performance cannot be achieved while also maintaining the suction needed for the vacuum to effectively pick up dust and dirt over time. Machines which do not use efficient cyclonic technology to separate the dust and dirt from the vacuum's airflow must instead accomplish this separation by use of a physical restriction, such as a bag or filter.

33. When the filter plays a major role in removing the dust from the vacuum's airflow, the filter can quickly become clogged with dust, making it more difficult for air to pass through the filter. This will cause the vacuum's suction power to decrease over time, and thus impair the vacuum's ability to pick up dust. To avoid this loss of suction, some vacuum cleaner manufacturers will leave their filters unsealed, which allows air to flow around the filter and out through the vacuum exhaust. In such situations, suction power can be sustained for a longer period, but at the cost of severely compromising the performance of the vacuum's filtration system.

34. As described below, Bissell has, upon information and belief, made this trade-off in many of its vacuum models, including some of its highest-selling vacuums, which have sacrificed filtration quality for other performance attributes. As also described below, Bissell's apparently deliberate trade-off of higher suction performance for lower filtration performance in many of its vacuum cleaner models is one of the factors that demonstrate Bissell's awareness of the falsity of its HEPA advertising statements at issue in this Complaint.

35. In sum, Bissell advertises to consumers that many of its vacuum cleaner models provide HEPA filtration when, in fact, they are incapable of HEPA-level performance in their current design.

**BISSELL'S HEALTH-THEMED ADVERTISING CAMPAIGN**

36. Bissell has created much of its brand identity around the message that its products provide a clean and healthy home environment for consumers. As stated boldly on Bissell's website, in describing the history of the Bissell company, "BISSELL's goal is to help you improve the ways you take care of your home, *right down to the microscopic irritants*. Since 1876, we've spent years developing cleaning tools designed to *keep your living environment up to the highest standards*". See <http://www.bissell.com/Our-History/> (emphasis added). Bissell explicitly represents that "when we say clean...WE MEAN CLEAN!" *Id.*

37. As the statements below illustrate, Bissell has emphasized the importance of HEPA filtration and allergen capture in order to induce the purchase of Bissell vacuums by consumers who desire to minimize the presence of allergen-containing dust from their homes, particularly dust that may aggravate asthma, allergies and other respiratory maladies. As discussed herein, Bissell's false health-benefits statements and messages, combined with Bissell's false statements about HEPA filtration and about the filtration performance and allergen capture attributes of its vacuums, have materially misled and continue to materially mislead consumers about the HEPA filtration performance and allergen capture capabilities of at least 11 different Bissell vacuum cleaner models, and the health benefits consumers who buy those vacuum models will obtain.

**The Involvement of Senior Bissell Executives in Bissell's False Health Benefit Statements**

38. Bissell's corporate executives are aware that the consumer health benefits that flow from HEPA-level dust and allergen capture are important considerations to a substantial segment of vacuum cleaner purchasers, and that advertising these health benefits gives Bissell a competitive advantage. Bissell's former International Markets Director Charles Gordon has stated that "[i]ncreasingly, consumers are health conscious and are aware that having a clean home means less sickness, less allergies." *See* "Bissell Offers 'a Fresh Approach'", *Contract Flooring Journal*, Sept. 1, 2008.

39. Bissell has publicly acknowledged that the health benefits of a vacuum cleaner can drive consumer purchases. Jim Krzeminski, Bissell's Executive Vice President of Product Development, Sales and Marketing, has stated "[a] recent survey showed that *52% of women and 49% of men would purchase a product if they felt that it would benefit the health of their family*". *See* Michael Duff, "Marketers Making Most of Healthy Home," *Floorcare Update, Retailing Today*, Apr. 9, 2007, at 17(1) (emphasis added).

40. A Bissell press release also acknowledges that "[c]onsumers are becoming increasingly aware of how important it is to create and maintain a healthy home environment[,]" and a Bissell executive points out that "[n]o one likes to think of their home as unclean or unhealthy, but the reality is that most homes are not as clean as they appear." *See* "Bissell Invites Consumers to Get Healthy, Starting with Their Homes; Online Contest Offers a \$10,000 Healthy Home Makeover," PR Newswire, Bissell Homecare, Inc., Oct. 17, 2006 (quoting Bissell Executive Vice President Krzeminski).

**Bissell Uses Its Website to Emphasize the Importance of HEPA-Level Filtration to Health-Conscious Consumers And Consumers Who Suffer From Allergies**

41. Through its website and other advertising, Bissell emphasizes the importance of HEPA filter technology to consumers who are concerned with improving the indoor air quality of their homes and removing household allergens.

42. Bissell knows that controlling indoor allergens is a concern for US consumers because of the high levels of allergens in homes. In fact, in a recent press release, Bissell quoted an AAFA statement that “the air in homes can contain 70 percent as much pollen as outdoor air, and nearly 100,000 dust mites can live in one square yard of carpet. Not to mention, eight in 10 American homes have dust mites, and six in 10 American homes -- even those without pets -- have cat or dog dander...”. See “New Bissell Cleaning Products Help Keep Homes Healthier,” Bissell Newsroom, Aug. 20, 2009 *available at* <http://www.bissell.com/NewsDetail.aspx?id=50>.

43. On this same theme, Bissell has capitalized on consumer concern by claiming that many of its vacuums capture 99.97% of certain common household allergens -- such as dust mites, pollen, ragweed and pet dander -- which Bissell identifies as the major allergens found in the home. See <http://www.bissell.com/cleaning-tips/allergen-control-tips/>.

44. Bissell has emphasized the importance of vacuuming with a “quality vacuum” to consumers who wish to control allergens in the home, and Bissell touts the significance of the supposed HEPA filters used in its vacuums. Bissell states that: “[v]acuuming is part of the dust control portion of the cleaning process to help control these allergens. It is important you use a quality vacuum. *Without a quality vacuum, you will be circulating dirty air throughout the room. What you need is a vacuum with an excellent filtration system. BISSELL has the HEPA Filter technology supporting many of the vacuum products including the Healthy Home Vacuum™.*

*The vacuum will aid in removing 99.97% of dust mites, pollens, and ragweed particles from your home*”. See <http://www.bissell.com/cleaning-tips/allergen-control-tips/> (emphasis added).

45. Bissell tells consumers that its vacuum cleaners provide important benefits for allergy-sufferers, and explains that vacuums which “stir up” the allergens into the air of the room are to be avoided. See <http://www.bissell.com/allergen-control/> (“Allergen Control Products[:]  
*When pollen, dirt and dander find their way into the home, they take up residence in carpet and on top of hard surfaces, causing trouble for people with allergies when they get stirred up. To help people reclaim their homes and their lives, BISSELL has developed a line of powerful allergen control products...Browse BISSELL’s line of allergen control products today*”) (emphasis added).

46. Finally, Bissell explicitly states that its vacuums all have been subjected to and passed industry-standard tests -- leading consumers to rely on the advertising claims Bissell makes. See <http://www.bissell.com/cleaning-tips/vacuum-development/> (“How Are Vacuums Tested? During the design and development process, BISSELL products are evaluated according to a comprehensive test process employing over 150 specific tests! This broad test approach assesses each design in terms of product safety, durability, reliability, and performance, leaving no stone unturned. No product is deemed ready for production and consumer purchase until it passes stringent design requirements established by marketing and engineering that ensures total user satisfaction. Many of the product tests that BISSELL performs are based on extensive experience gleaned from over 128 years of floor care experience; experience that is unmatched by our competitors. BISSELL also performs and complies with all of the industry standard tests that are recommended by UL, CSA, ASTM, ANSI, and IEC. Our test

requirements typically exceed the industry standards to ensure our products are extremely safe and high performing as we strive to be our customers first choice for cleaning products...”).

**BISSELL’S FALSE VACUUM CLEANER ADVERTISING STATEMENTS**

47. This Complaint challenges similar advertising statements that Bissell makes for 11 of its most popular vacuum cleaner models, including upright vacuums, canister vacuums and handhelds. Those vacuums are: the CleanView Helix, Lift-Off MultiCyclonic Pet, Pet Hair Eraser, Momentum, Healthy Home, Rewind SmartClean, and PurePro Multi Cyclonic upright vacuums; the Pet Hair Eraser and DigiPro canister vacuums; and the Pet Hair Eraser and CleanView Deluxe corded handheld vacuums.

48. For each of its leading-selling upright vacuum cleaners, Bissell advertises that it provides HEPA filtration and captures over 99.9% of common household allergens. The CleanView Helix (Model Series #82H1), Lift-Off MultiCyclonic Pet (Model Series #89Q9) and Pet Hair Eraser upright (Model Series #3920) all advertise on their packaging that the vacuums have a “HEPA Media Filter” and “Capture[] over 99.9% of dust mites, pollens and ragweed”. Bissell also advertises on the packaging for its Momentum upright (Model Series #82G71) that it has a “HEPA Media Filter” and “Captures over 99.97% of dust mites, pollens and ragweed”. The Lift-Off MultiCyclonic Pet, Pet Hair Eraser and Momentum upright vacuum cleaners are also advertised as having a “HEPA media post-motor filter”, and Bissell additionally claims that the Lift-Off MultiCyclonic Pet and Pet Hair Eraser uprights capture over 99.9% of pet dander. On the Bissell website, each of these vacuum models is also advertised as having HEPA Media filtration on the product’s “specs” webpage, and the Pet Hair Eraser and Momentum upright vacuums cleaners are both advertised as having a “Style 8/14 HEPA Post-Motor Filter.”



49. Bissell explicitly advertises to consumers, concerning the CleanView Helix, that “[t]he HEPA Media Filter captures over 99.9% of dust mites, pollen and ragweed to help you maintain a cleaner and healthier home.” See <http://www.bissell.com/how-to-videos/cleanview-helix/>. Bissell also advertises for its Pet Hair Eraser upright that the “HEPA Media Filter [] captures over 99.9 percent of pet dander, dust mites, pollen and ragweed to help create a healthier home environment.” See “Bissell Invites Pet Lovers to Make Their Pet a Celebrity: Online Contest to Choose Pet for the Packaging of the New Pet Hair Eraser Vacuum,” PR Newswire from Bissell Homecare, Inc., Jan. 17, 2008. Bissell similarly advertises that the Momentum upright vacuum cleaner’s “HEPA media filter captures over 99.97% of dust mites, pollens and ragweed.” See <http://www.bissell.com/how-to-videos/momentum/>.

50. Two new Bissell upright vacuum cleaner models continue in the same pattern of false HEPA filtration performance and allergen capture claims. Bissell advertises on the product packaging that both its new Rewind SmartClean upright vacuum (Model Series #58F8, 18M9-P) and new PurePro Multi Cyclonic upright vacuum (Model Series # 59G9) have a HEPA Media filter, and “Capture[] over 99.9% of dust mites, pollens and ragweeds”. On the Bissell website, both of these vacuum models are also advertised as having HEPA Media filtration on each product’s “specs” webpage, and the PurePro is further advertised as having a HEPA Post-Motor filter.

51. Bissell’s HEPA and allergen capture claims are not limited to its upright vacuum cleaner models. For example, Bissell represents on the packaging of its Pet Hair Eraser Canister vacuum (Model Series # 66T6) that it has “Dual HEPA Media Filters”, and Bissell claims on the packaging of the DigiPro Canister vacuum (Model Series # 6900) that it has a “Washable HEPA Filter” and “[c]aptures over 99.9% of dust mites, pollens and ragweed”. On the Bissell website,

both of these vacuum models are also advertised as having HEPA Media filtration on each product's "specs" webpage.

52. Bissell also represents on its product packaging that the Pet Hair Eraser corded handheld (Model Series #33A1-B) and CleanView Deluxe corded handheld (Model Series #47R5/47R5-1) each have a "HEPA Media Filter". On the "specs" pages of its website, these vacuum cleaners are also advertised as providing HEPA Media filtration. Bissell further claims that handheld vacuums offer a health benefit; thus, Bissell announced, on the introduction of the Pet Hair Eraser corded handheld, that "[i]ts compact design makes it easy to store and a *HEPA media filter ensures a healthier, thorough clean for the pet lover's home.*" See "Pet Hair, Dirt Disappear with New Pet Hair Eraser Hand Vacuum from Bissell," PR Newswire from Bissell Homecare, Inc., July 17, 2008 (emphasis added).

#### **Bissell's Healthy Home Upright Vacuum**

53. Bissell's most aggressive health claims are made in connection with its Healthy Home upright vacuum (Model Series # 16N5). Bissell, through the trade name it chose and the advertising claims it makes for this vacuum cleaner model, communicates the literal message to consumers that using this vacuum will result in significant health benefits and 100%, or virtually 100%, capture of all allergen particles picked up by the vacuum.

54. The Healthy Home packaging advertises that the vacuum has an "AireTight® HEPA System Filter" that "traps and seals in 100% of dust mites, pollen, ragweed, mold spores and 99.99% of pet dander" (emphasis added). Bissell advertises on the packaging that the Healthy Home "purifies the air while you vacuum" and offers "[f]resh pure indoor air". Bissell also claims that the Healthy Home is the only vacuum on the market to offer these advantages. See <http://www.bissell.com/NewsDetail.aspx?id=50> ("Whereas some vacuums simply

redistribute these allergens, the Healthy Home Vacuum [] is the only unit on the market to offer the Airetight® HEPA filtration system *to trap 100 percent of allergens like dust mites, ragweed, pollen and pet dander and prevent them from escaping back into the room via the exhaust air...*) (emphasis added).

55. Bissell explicitly informs consumers that the benefits offered by the Healthy Home will directly improve their health and household air quality. As printed on the Healthy Home packaging: “[t]he AireTight® HEPA Filtration System means that all the air that exits the vacuum is HEPA filtered. A HEPA filter captures 99.97% of particles as small as 0.3 microns (300 times smaller than a human hair). The Healthy Home Vacuum’s filter captures 100% of slightly larger particles like pollen, ragweed, dust mites and mold spores. *This is important because many vacuums spread these airborne allergens by spraying them back into the air while you vacuum. In comparison our AireTight® HEPA filtration system actually purifies the air while you are vacuuming.*” (emphasis added).

56. Bissell also claims that the Healthy Home vacuum is the best choice for health-conscious individuals. As stated directly on the product packaging: “What makes the Healthy Home Vacuum™ a healthier choice in vacuums? We understand how important it is to have a clean, healthy home.... It has an AireTight® HEPA Filtration System to purify the air while you vacuum. The system traps and seals in allergens like pollens and dust mites.”

#### **Bissell’s False and Fraudulent Claims of HEPA Performance**

57. Bissell advertises that the following 11 Bissell vacuums provide HEPA filtration: CleanView Helix upright; Lift-Off MultiCyclonic Pet upright; Pet Hair Eraser upright; Momentum upright; Rewind SmartClean upright; PurePro Multi Cyclonic upright; Pet Hair

Eraser Canister; DigiPro Canister; Pet Hair Eraser corded handheld; CleanView Deluxe corded handheld; and the Healthy Home upright.

58. Dyson commissioned an independent laboratory to conduct industry standard testing of each of the above vacuum cleaner models to determine whether any of them in fact provided HEPA-level filtration performance. The independent lab tested the performance of the filters in the vacuum cleaner with the vacuum running. The industry standard tests measured the percentage of particles 0.3-0.4 microns in size captured by a vacuum's filter.

**None of the Bissell Vacuums Provided HEPA-Level Filtration Performance During Vacuum Operation**

59. For each of the Bissell models, multiple vacuums were tested and each vacuum was tested multiple times with a new, clean filter installed each time as called for by the test protocol.

60. None of the Bissell vacuum models provided HEPA-level performance. In all cases, the actual filtration performance of the Bissell vacuums was materially worse than what Bissell's advertising claims to be the case. The following results are the particle capture percentage range and average for each Bissell vacuum model in this industry standard testing:

- Momentum: 79.5-89.0% [Average: 83.11%]
- CleanView Helix: 84.5-86.5% [Average: 85.32%]
- PurePro Multi Cyclonic: 85.1-89.6% [Average: 87.64%]
- Lift-Off MultiCyclonic Pet: 87.7-89.9% [Average: 88.95%]
- Rewind SmartClean: 87.5-92.3% [Average: 89.57%]
- Pet Hair Eraser Upright: 88.5-90.7% [Average: 89.50%]
- Pet Hair Eraser corded handheld: 86.9-92.3% [Average: 90.08%]
- DigiPro Canister: 89.2-92.7% [Average: 91.60%]

- CleanView Deluxe corded handheld: 89.4-94.9% [Average: 92.50%]
- Pet Hair Eraser Canister: 98.2-99.4% [Average: 98.70%]

61. This same industry standard test was also run on the currently-marketed version of Bissell's Healthy Home vacuum cleaner. While the Healthy Home's filtration performance was better than the performance of the other Bissell vacuums, it nonetheless was consistently and materially below HEPA-level, with an average particle capture of 99.91%. The particle capture requirement for HEPA performance -- 99.97% -- reflects the fact that falling short of HEPA performance by even a few hundredths of a percentage point can affect the amount of allergen-containing dust particles that a vacuum cleaner expels into household air during the vacuum's operation.

62. Relatedly, Bissell's use of its trademark "AireTight" to describe the air filtration performance of its Healthy Home vacuum cleaners also constitutes false advertising. The mark "AireTight" is indistinguishable in meaning from the word "airtight". The definition of "airtight", with regard to objects, is "not allowing air to escape or pass through." See <http://oxforddictionaries.com/definition/airtight>. But the Healthy Home is not airtight, as the above results show. Bissell uses the AireTight mark to describe the Healthy Home filtration system in several places on the product package. In one location, as previously noted, the Healthy Home package states that "[t]he AireTight® HEPA Filtration System means that all the air that exits the vacuum is HEPA filtered. A HEPA filter captures 99.97% of particles as small as 0.3 microns (300 times smaller than a human hair)...". Thus, in this one instance, Bissell appears to use AireTight to describe 99.97% particle capture rather than 100%. But, as test results above demonstrate, the Healthy Home filtration system is not "airtight" under this

definition either. In short, Bissell's use in its advertising of the mark AireTight to describe or identify the properties of the Healthy Home filtration system is false advertising.

**Bissell Filters Do Not Perform at HEPA Level Even When Sealed And Tested Alone**

63. The same independent laboratory also completed a second test to measure whether the Bissell filters were capable of capturing 99.97% of particles 0.3 micron in size even when the filter is optimally sealed and tested outside of the vacuum cleaner machine.

64. For each of the filter types used in the Bissell vacuums listed below, multiple new and unused filters were sealed and tested alone -- not inside the vacuum cleaner. The purpose of the test was to determine whether the filters were HEPA-capable. The following results are the particle-capture percentage ranges and particle-capture average for this test:

- CleanView Helix: 37.68-40.70% [Average: 39.03%]
- \*Lift-Off MultiCyclonic Pet: 50.98-58.67% [Average: 53.93%]
- \*Pet Hair Eraser upright: 50.98-58.67% [Average: 53.93%]
- \*Momentum: 50.98-58.67% [Average: 53.93%]
- Pet Hair Eraser Canister: pre-motor filter, 66.54-69.72%; post-motor filter, 99.01-99.05% [Averages: 68.74%; 99.03%]
- PurePro Multi Cyclonic: 89.8-90.6% [Average: 90.16%]
- DigiPro Canister: 92.38-92.48% [Average: 92.43%]
- Rewind SmartClean: 94.8-95.2% [Average: 94.98%]
- \*\*Pet Hair Eraser corded handheld: 95.76-95.87% [Average: 95.82%]
- \*\*CleanView Deluxe corded handheld: 95.76-95.87% [Average: 95.82%]

[Note: \* and \*\* indicate vacuum models which share the same filter type.]

65. This testing demonstrates that Bissell's advertising statements that its vacuums have HEPA filters are literally false. As previously noted, even vacuum filters that are HEPA-capable can fail for a variety of reasons to provide (and in the case of Bissell's vacuum cleaner models do not even come close to providing) HEPA-level performance when the vacuum cleaner is running. But this testing demonstrates that the filters on 10 of the 11 Bissell vacuum cleaners at issue in this action fail by a wide margin to provide HEPA-level filtration performance even when the filter is fully sealed and tested outside of the vacuum cleaner.

**Bissell's Allergen Capture Claims Are False**

66. In its advertising, Bissell makes specific and aggressive claims that many of its vacuum cleaner models capture over 99.9% of allergens -- specifically pollen, dust mites, ragweed and pet dander.

67. Dyson commissioned the same independent lab that conducted the testing described above to determine the percentage of ragweed, pollen, dust mite and pet dander allergen particles actually captured by the vacuum cleaner models claimed by Bissell to capture over 99.9% of certain allergen particles. The lab tested the advertised ability of the following Bissell vacuum models to capture 99.9% or more of ragweed, pollen and dust mite particles: CleanView Helix; Lift-Off MultiCyclonic Pet; Pet Hair Eraser upright; Momentum; Rewind SmartClean; PurePro Multi Cyclonic; and DigiPro Canister. The lab also tested the ability of the Lift-Off MultiCyclonic Pet and the Pet Hair Eraser upright to capture over 99.9% of pet dander, as Bissell advertises. Bissell's advertising claim that the Healthy Home Vacuum captures 99.99% of pet dander was also tested.

68. For each of the above 8 vacuum cleaner models for which Bissell makes explicit percentage allergen-capture advertising claims, multiple vacuums were tested and for each

vacuum, the test was run multiple times with a clean, new filter installed as provided by the test protocol. Each allergen was tested separately.

69. Test results showed that all of Bissell's allergen particle capture claims noted above are false.

70. Dust mite testing was conducted using various sized dust mite particles as they typically exist in homes. The Bissell vacuums tested did not come close to capturing over 99.9% of the smaller-sized dust mite particles—indeed, falling as low as 77.3% for some models. And even for the easier-to-capture larger-sized dust mite particles, the Bissell vacuums did not perform as advertised. The following results are the particle capture percentage ranges and averages for the testing involving dust mite particles in sizes ranging from 5.0-10.0 microns:

- Lift-Off MultiCyclonic Pet: 77.3-80.6% [Average: 79.28%]
- DigiPro Canister: 82.6-85.9% [Average: 84.44 %]
- CleanView Helix: 84.2-87.9% [Average: 85.56%]
- Momentum: 84.5-91.9% [Average: 86.87%]
- Pet Hair Eraser upright: 91.4-95.5% [Average: 93.11%]
- PurePro Multi Cyclonic: 93.4-99.5% [Average: 95.29%]
- Rewind SmartClean: 93.9-98.6% [Average: 95.98%]

71. For ragweed, testing was conducted measuring various-sized ragweed particles as they typically exist in homes. Again, the ragweed particle capture percentage of the Bissell vacuum cleaner models tested fell well short of what Bissell claims in its advertising. Not only did the vacuums fail to achieve an average of 99.9% particle capture even of large-sized ragweed particles, but the particle capture percentage dropped as low as 83.2% for the smaller ragweed



particles. The following results are the particle capture percentage ranges and averages for the ragweed particles of the 5.0-10.0 micron size:

- DigiPro Canister: 83.2-86.5% [Average: 85.22%]
- CleanView Helix: 85.1-86.9% [Average: 86.28%]
- Lift-Off MultiCyclonic Pet: 86.8-88.4% [Average: 87.74%]
- Pet Hair Eraser upright: 83.5-88.9% [Average: 86.70%]
- Momentum: 89.4-93.2% [Average: 91.07%]
- PurePro Multi Cyclonic: 95.2-96.6% [Average: 95.82%]
- Rewind SmartClean: 95.2-98.3% [Average: 96.70%]

72. The independent laboratory also conducted pet dander particle capture testing on Bissell's Lift-Off MultiCyclonic Pet and Pet Hair Eraser uprights. The results of this testing again show that Bissell's over 99.9% pet dander particle capture advertising statements for these two vacuum cleaner models are literally false. The following results are the pet dander particle capture percentage ranges and averages for pet dander particles of 0.3-1.0 micron size: for the Lift-Off MultiCyclonic Pet: 79.8-84.4% [Average: 82.07%]; for the Pet Hair Eraser upright: 89.2-92.5% [Average: 90.96%].

73. The independent laboratory also performed pet dander particle capture tests on the currently-marketed version of the Healthy Home. Pet dander particles in the 0.3 to 1.0 micron particle size are common in consumers' homes. In contrast to Bissell's advertising statements, the Healthy Home vacuum did not capture 99.99% of the pet dander particles in this particle range, nor did it even meet the lower (99.97%) HEPA standard.

### **High Dust Emissions of Bissell Vacuum Cleaners**

74. As detailed above, Bissell's HEPA and allergen capture advertising statements are literally false, and are likely to mislead consumers into the false belief that Bissell vacuum cleaners capture more than 99.9% of the allergen particles picked up by the vacuum cleaner.

75. The falsity of Bissell's HEPA and allergen capture claims is material because even a very small percentage change in particle capture can result in a significant increase in the *number* of allergen-containing dust particles which pass through the filter and are expelled into the air in the consumer's home.

76. The same independent lab was commissioned to complete industry-standard testing to measure the number of particles expelled from Bissell vacuum cleaners, even using a *new filter* (*i.e.*, a filter that has not previously been used in any vacuuming task) for every test run of every Bissell vacuum model. The results of this testing showed that Bissell's poor filtration performance and poor design lead to unacceptably and exceptionally large amounts of particles being exhausted by the vacuums into the air while the vacuums were running.

77. Emission measurements included the following upright Bissell vacuums: CleanView Helix; Lift-Off MultiCyclonic Pet; Pet Hair Eraser; Momentum; Rewind SmartClean; and PurePro Multi Cyclonic. The air expelled from these vacuums contained literally millions of particles per cubic foot—at times ranging as high as tens of millions. The following results are the average number of particles expelled from each vacuum per cubic foot:

- CleanView Helix: 4,430,539
- Lift-Off MultiCyclonic Pet: 5,221,233
- PurePro Multi Cyclonic: 10,242,898
- Rewind SmartClean: 10,732,747

- Pet Hair Eraser upright: 12,155,644
- Momentum: 15,144,142

78. In short, Bissell's advertising campaign explicitly informs consumers that many Bissell vacuum cleaners provide HEPA-level air filtration performance, and capture 99.9% of several different types of allergen particles. As described above, these claims are literally false, and they grossly misrepresent the Bissell vacuum cleaners' air filtration and allergen capture performance, which in virtually all cases is extremely poor. In addition, Bissell's advertising campaign specifically warns consumers that, unlike vacuums which spew large volumes of dust and allergen particles into the air in a consumer's home when the vacuum is running, Bissell vacuums provide consumers with important health benefits. Yet, independent testing proves that spewing vast amounts of allergen-containing dust particles in the air is precisely what Bissell's vacuum cleaner models actually do.

#### **BISSELL HAS ENGAGED IN WILLFULLY FALSE ADVERTISING**

79. Upon information and belief, Bissell knows that the advertising statements at issue in this Complaint are untrue.

80. As previously noted at ¶ 46 of this Complaint, Bissell's advertising explicitly informs consumers that its vacuum cleaners all have been subjected to and must pass "stringent design requirements . . . that ensure[] total user satisfaction", and over "150 separate tests", including a full range of "industry standard tests." See <http://www.bissell.com/cleaning-tips/vacuum-development/>. Bissell also represents to consumers that its "test requirements typically exceed the industry standards to ensure our products are...high performing as we strive to be our customers first choice for cleaning products...". *Id.*

81. In fact, industry standard testing shows that none of the filters in the Bissell vacuums at issue in this Complaint, except for the Healthy Home filters, are even HEPA-capable. In other words, even when the filtration performance of those filters is tested outside the vacuum, with the filters thoroughly sealed, none of those filters perform at HEPA-level. Moreover, as noted at ¶¶ 60 and 64 hereof, the discrepancy between the actual particle capture performance of those filters and HEPA-level particle capture (99.97%) is so vast that it is inconceivable that any testing of the HEPA-capability of the filters that Bissell did conduct could have substantiated Bissell's HEPA claims. Thus, upon information and belief, Bissell either did not test the HEPA-capability of its filters -- contrary to the representations of its advertising -- or Bissell's tests demonstrated that Bissell's filters are not HEPA-capable.

82. Moreover, even if Bissell's filters were HEPA-capable, they still could not achieve HEPA-level filtration performance in the vacuum cleaner while the vacuum was running unless, among other things, there was an effective seal between the filter and the vacuum body that prevented dust and allergens from circumventing the filter and being emitted back into the air of the room being cleaned through the vacuum's exhaust.

83. Of the 11 Bissell vacuums at issue in this Complaint, the following contain no post-motor seals for the filter: the CleanView Helix, Lift-Off MultiCyclonic Pet, Pet Hair Eraser upright, Momentum, Rewind SmartClean and PurePro Multi Cyclonic. This means that small dust and allergen particles can and do easily circumvent the filter and pass right into the vacuum's exhaust and the ambient air. Any engineer with experience in vacuum design would recognize that a vacuum without a proper seal would be incapable of HEPA-level filtration performance when the vacuum cleaner was in operation. Upon information and belief, Bissell

chose not to include post-motor seals in the above vacuums in an attempt to boost the vacuum cleaner's ability to maintain suction.

84. In one additional instance, Bissell did install a sealing component, but in a way that renders the seal entirely ineffective. The Pet Hair Eraser Canister appears to have a sealed filter component fitted into the machine, but it does not function properly. The "seal" in the Pet Hair Eraser Canister is merely a loose fitting filter housing which is placed in the vacuum, but by failure of design, does not exert any pressure to form an effective seal between the filter and the vacuum body. As a result, air and particles can pass around the filter and exhaust back into the air of a consumer's home.

85. Of the 11 Bissell vacuums tested, only the Healthy Home vacuum has a seal which is capable of working properly. In fact, upon information and belief, the design of the Bissell vacuums other than the Healthy Home demonstrates that Bissell deliberately sacrificed filtration performance for improved suction capability by either not including a seal component at all (as is the case in most of the vacuums tested), or not designing the sealing component properly, such that there is insufficient force to enable it to work properly (as in the case of the Pet Hair Eraser Canister).

86. Finally, the failure of Bissell's Healthy Home to provide HEPA-level filtration when the vacuum is in operation is **not** due to the filter being incapable of HEPA performance or to the filter seal being incapable of effectively preventing dust or allergen particles from circumventing the filter. In other words, the existence of the Healthy Home proves that Bissell engineers know how to design a vacuum cleaner that is capable of HEPA performance, even though the Healthy Home does not achieve that performance. Thus, the complete inadequacy of

the filters and filtration systems in the other Bissell vacuums at issue in this action was a matter of design choice, not lack of knowledge.

### **HARM CAUSED TO DYSON BY BISSELL'S ACTIONS**

87. Upright vacuums account for approximately 50% of the US vacuum market. Canister and handheld vacuums account for approximately 15% of the US vacuum market, with the remainder of the market being vacuum cleaner types that Dyson does not make.

88. Dyson is the US upright vacuum cleaner market leader measured by dollar share, in other words dollars spent on all vacuum cleaners sold in the US. Dyson is also the dollar share market leader in upright, canister and handheld vacuums combined.

89. As discussed above, Dyson is the world's leading innovator and manufacturer of high performance vacuum cleaners. Among the most important features of Dyson's upright and canister vacuum cleaners is that they provide superior filtration and therefore excellent allergen particle capture, which can benefit consumers suffering from allergies and other respiratory problems, or who are otherwise interested in reducing the presence of potentially bothersome and harmful dust and allergens in their homes.

90. The many innovations, including cyclonic separation and air filtration innovations, that distinguish Dyson vacuum cleaners from those of other vacuum cleaner manufacturers and distributors were and are very costly to develop and implement. Dyson's upright vacuums typically are sold to consumers for \$399.99 and up. Similarly, Dyson canister and handheld vacuums are typically sold to consumers for \$399.99 and up, and \$219.99 and up, respectively.

91. Bissell produces vacuum cleaners that are sold at substantially lower prices than Dyson vacuums, and that perform poorly compared to Dyson vacuums. Thus, the Bissell upright

vacuums at issue in this action are sold to consumers for \$79.99 and up, and in all or virtually all instances, for much less than the price of Dyson upright vacuums. Similarly, the Bissell canister vacuum cleaners and handheld vacuum cleaners at issue in this action are sold to consumers for \$129.99 and up, and \$29.99 and up, respectively, and in all or virtually all instances for much less than the price of Dyson canister and hand-held vacuums.

92. As discussed in detail herein, Bissell, like Dyson, advertises HEPA filtration of its vacuum cleaner product line. However, Bissell's HEPA-related advertising differs from Dyson's in two fundamental respects. First, Bissell's HEPA performance and allergen capture advertising statements promise much more to consumers than Dyson does, principally in that Bissell makes extensive use of quantitative claims about the specific percentage of dust and allergen particles Bissell's vacuums purportedly capture, and the supposed resulting health benefits. Second, Bissell's HEPA performance and allergen capture claims are false.

93. Bissell's false HEPA-performance, allergen capture and health benefit advertising statements have caused, and will continue to cause, significant damage to Dyson. Bissell makes these false advertising statements for all or virtually all of its top selling vacuum models. Indeed, Bissell's CleanView Helix, Lift off MultiCyclonic Pet, Pet Hair Eraser Upright, Momentum and Healthy Home upright vacuums, all of which are at issue in this action, account for more than 80% of Bissell's upright vacuum cleaner sales, and are Bissell's five top-selling upright vacuums by volume (excluding steam and deep cleaning vacuums). Upon information and belief, Bissell's false advertising statements at issue herein have boosted the sales and profits of these Bissell vacuums, and of Bissell vacuum cleaner sales generally, and have harmed Dyson sales, profits and the goodwill associated with Dyson vacuums and the Dyson brand by diverting

certain consumers away from Dyson products into the lower-priced market in which Bissell sells its products.

94. Bissell and Dyson are not in competition for all customers. However, many consumers who would choose to spend their money to buy a Dyson vacuum cleaner are likely to choose to buy Bissell's lower priced vacuum cleaners if they are induced by Bissell's advertising to believe that the performance of the Bissell vacuum is just as good, or better, than the Dyson vacuum as to a product attribute that is important to the consumer. Of course, if the Bissell advertising were truthful, then more power to Bissell. Here, however, Bissell's statements of HEPA and allergen capture performance, and the resulting health benefits that consumers will allegedly experience, are blatantly false.

95. Upon information and belief, sales of Dyson vacuums, and the resulting profits, have been lost, and will continue to be lost, as a result of consumers who otherwise would have purchased Dyson vacuum cleaners choosing instead to purchase Bissell vacuum cleaners based on the mistaken belief, caused by Bissell's false advertising discussed herein, that Bissell's vacuum cleaner models provide HEPA-level filtration performance, capture over 99.9% of harmful allergen particles and provide the health benefits advertised by Bissell.

96. Dyson has developed and maintained extensive goodwill with regard to its products and business, by providing innovations that few if any other vacuum cleaner manufacturers provide. Bissell's marketing materials, previously discussed herein, make clear that among the performance factors that are important to prospective vacuum cleaner buyers are those that impact the air quality of the user's home and provide health benefits in the form of materially reducing allergy causing particles in household air.



97. Upon information and belief, significant numbers of consumers have relied and will continue to rely on, and be deceived by, Bissell's HEPA performance and allergen capture claims when deciding which vacuum to purchase. And, when Bissell's false claims of HEPA performance and virtually 100% allergen particle capture are combined with Bissell's lower purchase prices, they have, upon information and belief, induced and will continue to induce significant numbers of consumers interested in air filtration performance and household air quality, to adopt the mistaken impression that Dyson vacuum cleaners are overpriced or not worth the price charged for them. Upon information and belief, Bissell's false claims, for this reason, have significantly damaged and will continue to damage Dyson's goodwill.

98. Upon information and belief, the foregoing actions of Bissell were undertaken willfully and wantonly, and with a conscious disregard for Dyson's rights.

99. As a direct and proximate result of Bissell's false and deceptive campaign, Dyson is suffering immediate and continuing irreparable injury for which there is no adequate remedy at law.

100. As discussed above, Bissell's actions have caused and will likely continue to cause Dyson to suffer substantial damages, including loss of sales and profits of its vacuum cleaner products and loss of goodwill.

101. The foregoing acts have occurred in, or in a manner affecting, interstate commerce.

**CAUSES OF ACTION**

**COUNT I**

**FALSE ADVERTISING  
IN VIOLATION OF THE LANHAM ACT, 15 U.S.C. § 1125(A)**

102. Dyson realleges and incorporates by reference paragraphs 1 through 101 of the Complaint, as though set forth in full herein.

103. The foregoing acts of Bissell constitute false advertising and false representation in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

104. Bissell has made material false statements of fact in its commercial advertisements for its vacuum products, and such statements have and are likely to continue to influence consumers' purchasing decisions.

105. Bissell's statements have actually deceived and have the tendency to deceive a substantial segment of consumers, who have relied or will likely rely on Bissell's false statements in making their vacuum cleaner purchase decisions.

106. Bissell has caused its false statements to enter interstate trade or commerce.

107. As a direct and proximate result of Bissell's false and deceptive campaign, Dyson is suffering immediate and continuing irreparable injury for which there is no adequate remedy at law.

108. As a direct and proximate result of these actions, Dyson has suffered and will continue to suffer significant monetary damages and discernible competitive injury by the direct diversion of sales from Dyson to Bissell and by a loss of goodwill associated with Dyson's vacuum products.

109. Bissell's false advertising is knowing and willful. Dyson is entitled to injunctive relief and to the recovery of all available damages, attorneys' fees, costs and Bissell's profits.

110. This is an exceptional case within the meaning of Section 35 of the Lanham Act, 15 U.S.C. § 1117.

**COUNT II**  
**VIOLATION OF ILLINOIS UNIFORM DECEPTIVE TRADE PRACTICES ACT,**  
**815 ILCS 510/2**

111. Dyson realleges and incorporates by reference paragraphs 1 through 110 of the Complaint, as if fully set forth herein.

112. Both Dyson and Bissell are engaged in trade and commerce in the state of Illinois and both are engaged in interstate trade or commerce.

113. Bissell has represented that its vacuum cleaners have characteristics, uses and/or benefits that they do not have.

114. Bissell has represented its goods are of a particular standard, quality or grade when they are not.

115. Bissell's actions involve advertising and trade practices which are addressed to the market generally and implicate consumer protection concerns.

116. Bissell's conduct constitutes deceptive acts or practices in the course of business, trade or commerce in violation of 815 ILCS 510/2, including misrepresentation and concealment or omission of material facts in its advertising, with intent that others rely upon the misrepresentation, concealment or omission of such material facts.

117. Bissell's statements have actually deceived and have the tendency to deceive a substantial segment of consumers, who have relied or will likely rely on Bissell's false statements in making their vacuum cleaner purchase decisions.

118. As a direct and proximate result of Bissell's false and deceptive campaign, Dyson is suffering immediate and continuing irreparable injury for which there is no adequate remedy at law.

119. Bissell has caused, and is likely to continue causing, substantial injury to Dyson and to consumers. As a direct and proximate result of these actions, Dyson has suffered and will continue to suffer significant monetary damages.

120. Bissell's deceptive practices are knowing and willful. Dyson is entitled to injunctive relief and to the recovery of its attorneys' fees and costs.

**COUNT III**  
**VIOLATION OF ILLINOIS CONSUMER FRAUD AND DECEPTIVE TRADE**  
**PRACTICES ACT, 815 ILCS 505/2**

121. Dyson realleges and incorporates by reference paragraphs 1 through 120 of the Complaint, as if fully set forth herein.

122. Both Dyson and Bissell are engaged in trade and commerce in the state of Illinois and both are engaged in interstate trade or commerce.

123. Bissell's actions involve advertising and trade practices which occur substantially in Illinois, are addressed to the market generally and implicate consumer protection concerns.

124. Bissell's conduct constitutes deceptive acts or practices in the course of business, trade or commerce in violation of 815 ILCS 505/2, including misrepresentation and concealment or omission of material facts in its advertising, with intent that others rely upon the misrepresentation, concealment or omission of such material facts.

125. Bissell's statements have actually deceived and have the tendency to deceive a substantial segment of consumers, who have relied or will likely rely on Bissell's false statements in making their vacuum cleaner purchase decisions.

126. As a direct and proximate result of Bissell's false and deceptive campaign, Dyson is suffering immediate and continuing irreparable injury for which there is no adequate remedy at law.

127. Bissell has caused, and is likely to continue causing, substantial injury to Dyson and to consumers. As a direct and proximate result of these actions, Dyson has suffered and will continue to suffer significant monetary damages.

128. Bissell's deceptive practices are knowing and willful. Dyson is entitled to injunctive relief and to the recovery of damages, attorneys' fees, costs and Bissell's profits. In addition, based on Bissell's willful activities, Dyson is entitled to punitive damages.

**COUNT IV**  
**COMMON LAW UNFAIR COMPETITION**

129. Dyson realleges and incorporates by reference paragraphs 1 through 128 of the Complaint, as if fully set forth herein.

130. Both Dyson and Bissell are engaged in trade and commerce in the state of Illinois and both are engaged in interstate trade or commerce.

131. Bissell's actions involve advertising and trade practices which are addressed to the market generally and implicate consumer protection concerns.

132. Bissell's conduct constitutes unfair competition, including misrepresentation and concealment or omission of material facts in its advertising. Bissell intended that others rely upon that misrepresentation, concealment or omission of such material facts.

133. Bissell's statements have actually deceived and have the tendency to deceive a substantial segment of consumers, who have relied or will likely rely on Bissell's false statements in making their vacuum cleaner purchase decisions.

134. As a direct and proximate result of Bissell's unfair competition, Dyson is suffering immediate and continuing irreparable injury for which there is no adequate remedy at law.

135. Bissell has caused, and is likely to continue causing, substantial injury to Dyson and to consumers. As a direct and proximate result of these actions, Dyson has suffered and will continue to suffer significant monetary damages.

136. Bissell's unfair practices are knowing and willful. Dyson is entitled to injunctive relief and to the recovery of damages, costs and Bissell's profits. In addition, based on Bissell's willful activities, Dyson is entitled to punitive damages.

#### **PRAYER FOR RELIEF**

WHEREAS, Dyson prays for relief against Bissell, and respectfully requests an entry of judgment as follows:

1. For a Permanent Injunction Order which:
  - a. Permanently enjoins Bissell, its officers, agents, servants and employees, and all persons in active concert and participation with them, including their affiliates, from further disseminating the false and deceptive advertising claims in any form or medium;
  - b. Requires Bissell to withdraw and/or retrieve all offending advertising materials from the marketplace;
  - c. Requires Bissell to disseminate among consumers corrective advertising, including corrective product packaging, to dispel the false and deceptive messages contained in the subject advertising;

2. For an order directing Bissell to account for, and to pay over to Dyson, all gains, profits and advantages derived by Bissell from the above-described wrongful acts; and
3. For monetary damages sustained by Dyson as a result of Bissell's unlawful conduct, in an amount to be proved at trial; and
4. For an order multiplying or otherwise enhancing any award under paragraphs 2 and 3 because of Bissell's willful and deliberate activities described herein; and
5. Directing that Bissell pay Dyson punitive damages resulting from state law violations; and
6. Directing that Bissell pay Dyson the costs of this action and its reasonable attorneys' fees incurred herein as authorized by law; and
7. Granting Dyson such other and further relief as this Court deems just and proper.

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Dyson hereby demands a trial by jury.

Dated: December 22, 2010

Respectfully submitted,

By: /s/ Steven R. Gilford  
Steven R. Gilford

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